

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PAUL MAZZA,

Plaintiff,

- against -

CUMULUS MEDIA INC.

Defendant.

Docket No. 1:17-cv-6895

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Paul Mazza (“Mazza” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Cumulus Media Inc., (“Cumulus” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of two copyrighted photographs of American country singer and songwriter Luke Bryan’s tractor trailer that crashed into an overpass on the Long Island Expressway, owned and registered by Mazza, a New York based photographer. Accordingly, Mazza seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacting doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Mazza is a professional photojournalist in the business of licensing his photographs to online and print media for a fee having a usual place of business at 184 North 5th Street, Lindenhurst, New York 11757.

6. Upon information and belief, Cumulus is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 2 Penn Plaza, #17, New York, New York 10121. At all Cumulus material hereto, Cumulus has owned and operated thirty-seven website's at the URL's: <http://www.wiov.com>, <http://www.kixbrooksradio.com>, <http://www.nashfm1055.com>, <http://www.nashfm1033.com/>, <http://www.kix96.com/>, <http://www.kqfc.com/>, <http://www.925nashicon.com>, <http://www.nashicon989.com/>, <http://www.nashfmwisconsin.com/>, <http://www.983nashicon.com/>, <http://www.k105country.com/>, <http://www.nashfm969.com/>, <http://www.1015nashicon.com/>, <http://www.1049nashicon.com/>, <http://www.wden.com/>, <http://www.tykellyandchuck.com/>, <http://www.nashfm1027.com/>, <http://www.wbwn.com/>, <http://www.937nashicon.com/>, <http://www.nashfm1025.com/>, <http://www.kscs.com/>, <http://www.973nashfm.com/>, <http://www.wkhx.com/>, <http://www.wvqq101.com/>, <http://www.katm.com/>, <http://www.k100country.com/>, <http://www.1079nashicon.com/>, <http://www.kbull93.com/>, <http://www.wfms.com/>, <http://www.nashfm941.com/>, <http://www.nashpensacola.com/>, <http://www.klur.com/>, <http://www.955nashicon.com/>,

<http://www.wlwi.com/>, <http://www.nashfm100.com/>, and <http://www.krmd.com/>,
<http://www.bigcountry1073.com/>, (the “Websites”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photographs

7. Mazza photographed American country singer and songwriter Luke Bryan’s tractor trailer that crashed into an overpass on the Long Island Expressway (the “Photographs”). A true and correct copy of the Photographs are attached hereto as Exhibit A.

8. Mazza is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs have a pending United States Copyright Office number of 1-5775791156.

B. Defendant’s Infringing Activities

10. On or about, August 29, 2017, Cumulus ran articles on the thirty-six Websites entitled *Luke Bryan’s Equipment Truck Crashes Into Overpass*. See

<http://www.925nashicon.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>

<http://www.nashicon989.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>

<https://countryrebel.com/blogs/videos/luke-bryans-trailer-strikes-overpass-after-leaving-concert>

<http://www.nashfmwisconsin.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>

<http://www.983nashicon.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>

<http://www.k105country.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>

<http://www.nashfm969.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>

<http://www.1015nashicon.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>

<http://www.1049nashicon.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>

<http://www.wden.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>

<http://www.tykellyandchuck.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>

<http://www.nashfm1027.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.wbwn.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.937nashicon.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.nashfm1025.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.kscs.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.973nashfm.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.wkhx.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.wwqq101.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.katm.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.k100country.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.1079nashicon.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.kbull93.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.wfms.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.nashfm941.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.nashpensacola.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.klur.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.955nashicon.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.wlwi.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.nashfm100.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.krmd.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>
<http://www.bigcountry1073.com/2017/08/29/luke-bryans-equipment-truck-crashes-into-overpass/>

11. The articles prominently featured the Photographs. A true and correct copy of the articles with the Photographs are attached hereto as Exhibit B1-B-4.

12. Cumulus did not license the Photographs from Plaintiff for its articles, nor did Cumulus have Plaintiff's permission or consent to publish the Photographs on its Websites.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST CUMULUS)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Cumulus infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Websites. Cumulus is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Cumulus have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to her attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Cumulus be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 11, 2017

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